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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

No. 573.

HYMAN G. STEIN, Petitioner,

vs.

ST. LOUIS PUBLIC SERVICE COMPANY, Debtor, HENRY W. KIEL, Trustee for ST. LOUIS PUBLIC SERVICE COMPANY, et al.

REPLY

Of Petitioner to Brief of Respondents, St. Louis Public Service Company and Henry W. Kiel, Trustee, St. Louis Public Service Company, Debtor, on Petition for Writ of Certiorari.

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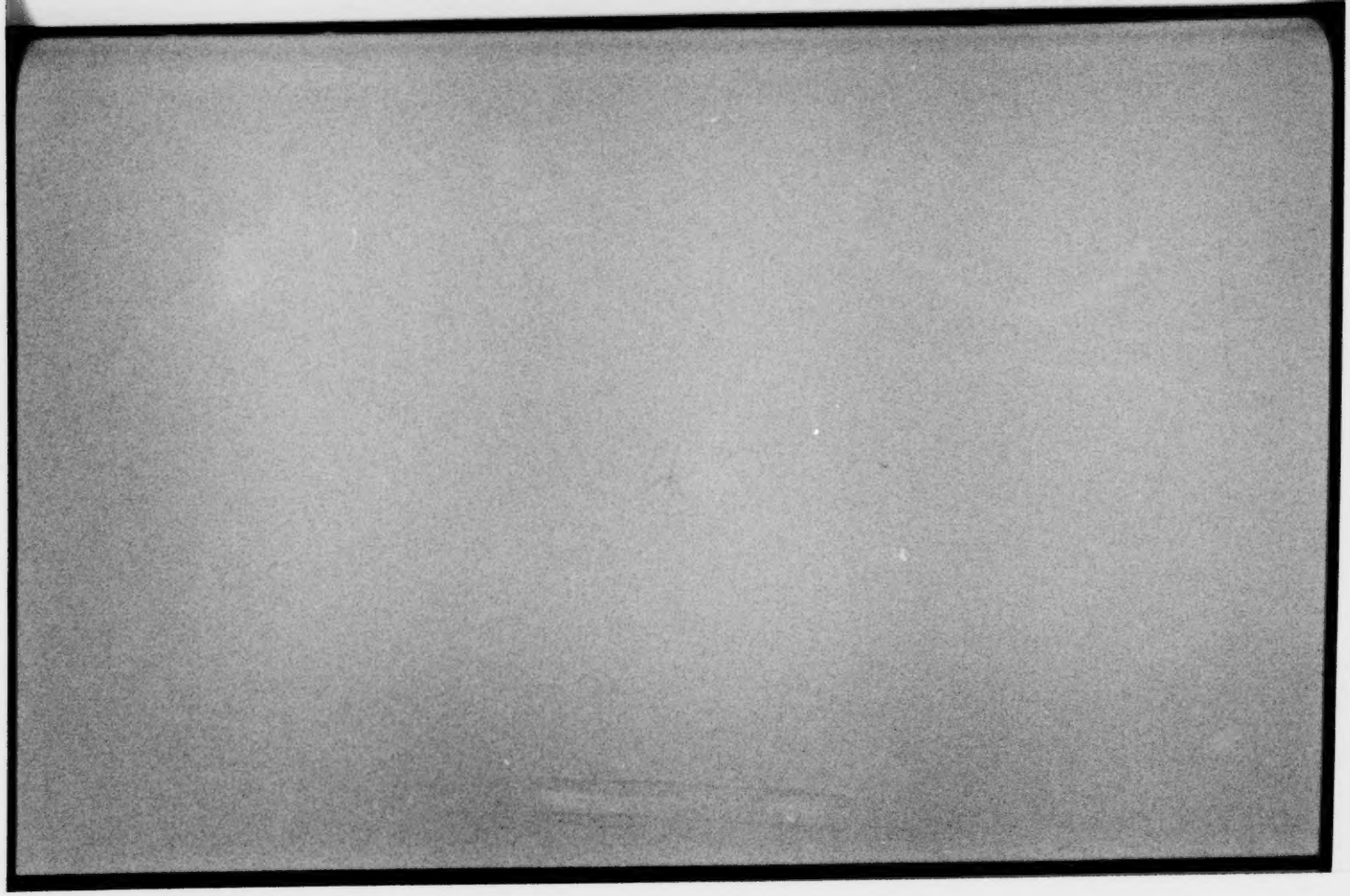

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I.

The utter fallacy of such an interpretation of Section II (2d) of the Plan, as that contended for by Respondents, is conclusively demonstrated when viewed in the light of a question to which, within all the realm of logic, there is and can be found no reasonable answer, namely:

> If "compensable" services of the tort creditors' Committee and counsel "in, and in connection with, the reorganization proceedings," were intended to be ascertained, measured and governed by those self-

*Said Respondents are for brevity hereinafter referred to as "Respondents."

same standards applicable to the services of all other committees and counsel in the proceedings—*why were the tort creditors singled out as the sole and only class for which the Plan contains an express provision that, as a part and "further payment" on account of their claims, the reorganized Debtor* "SHALL PAY" *the compensation and expenses of its Committee and counsel for their services in, and in connection with, the reorganization proceedings* (R. 25), *while as to all other committees and counsel there was made but that general provision in Section II (7) of the Plan* (R. 28-29) *that the Debtor shall pay such allowances as* "MAY" *be made or approved by the Court?*

II.

Mindful that a controversy respecting the adequacy of compensation allowed an attorney in a bankruptcy proceeding does not, in or of itself, present such a question as is within the applicable rule respecting the character of questions for the review of which this Honorable Court will grant certiorari, Petitioner did not assign as a reason for the allowance of the writ that even those of his services which the Court below **did** characterize and treat as "compensable" were not adequately compensated.*

The compensation of $15,000.00 allowed to Petitioner was allowed him, and treated, by the Courts below as being **solely** for services which were of benefit to the Debtor (R. 213-214), and such allowance was not contested or appealed by Debtor or its Trustee. Therefore, the contention, in Point IV of Respondents' brief, to the effect that said allowance was sufficient to cover all of Petitioner's services, including both those beneficial to the Debtor and those on behalf of the tort creditors, is an unwarranted effort now and indirectly to suggest that the allowance

*In the Court below Petitioner vigorously contended that the amount allowed him was wholly inadequate for even those of his services which, being beneficial to the Debtor, were treated by the Courts below as "compensable" (R. 193-194, 219-221).

made Petitioner **solely** for services beneficial to the Debtor exceeded the reasonable value of such services. It is quite obvious that, under the facts and circumstances, the amount allowed Petitioner **solely** for services which were beneficial to the Debtor is wholly immaterial to the question, here presented, of whether the refusal to allow Petitioner compensation for his services on behalf of the tort creditors contravened Section II (2d) of the Plan, and the rights of the tort creditors and Petitioner thereunder.

However, since Respondents, in their brief, undertake to minimize the value of Petitioner's services and to characterize as "feather stitching" certain designated portions thereof, as well as "most of the other things enumerated by Petitioner in his ninety-page petition (for compensation)," Petitioner deems it permissible to call attention to the uncontradicted fact that the services performed by the Petitioner, and now so slightingly referred to by the Debtor and its Trustee, included the institution and prosecution by Petitioner of the $10,000,000.00 bank loan litigation (R. 82-89), and that in the settlement of such litigation, respecting the claims filed by the banks **and which the Debtor's Trustee had previously recommended should be allowed as valid claims** (R. 81-82), the banks made concessions whereby the Debtor saved $2,222,144.01 (R. 23-24, 89-93, 156-158). If services which effected such a large saving to the Debtor constitute "feather stitching," then, certainly, the Debtor is in no position to minimize the value of "feather stitching"! Petitioner deems it further permissible to point out that it is undisputed that Petitioner's services, now so lightly viewed by Respondents, also resulted in the tort creditors receiving about $600,000.00 more than the original plans of reorganization allotted them (R. 62-65).

Furthermore, it is highly significant that, at the hearing in the District Court on Petitioner's application for com-

pensation, counsel for the Debtor and its Trustee informed the Court that this Petitioner had "worked hard * * *" and that Petitioner had "co-operated throughout this entire proceeding with the Trustee and his counsel in the administration of the property" (R. 173). Certainly, the present position of counsel for the Respondents is hardly consistent with his position at that hearing.

Respondents state at page 22 of their brief that the parties who had invested their money in the Debtor's enterprise received about 50 per cent of the amount of their claims. Such fact is in nowise pertinent here, and, in any event, does not require that this Petitioner should be made the "whipping-boy." Petitioner was allowed a sum equaling less than three-fourths of 1 per cent of the $2,222,-144.01 saved for the Debtor through settlement of the bank loan litigation, **which Petitioner had instituted and prosecuted after the Debtor's Trustee had recommended that the banks' claims be adjudged valid.** Further, the compensation allowed Petitioner is less than 3 per cent of the $600,000.00 which he recovered for the tort creditors over and above the aggregate amount allotted them under original plans of reorganization (R. 62-65).

III.

The Respondents contend that the order confirming the Plan was tantamount to a disapproval of the provisions of the Plan respecting the determination and payment of Petitioner's compensation. Such contention, in effect, charges the trial court with mischievously misleading the tort creditors in connection with what they would receive in settlement of their claims—for the trial court previously had specifically ordered the Debtor's Trustee to advise the tort creditors by a written notice (R. 41-43), and he did so advise the tort creditors (R. 47), that under the Plan they would receive certain specified sums in cash "and in

addition thereto, and as a further payment on account of said claims," the Debtor would pay in cash the reasonable compensation and expenses of Petitioner for his "services in, and in connection with the reorganization proceedings, the amount of such compensation and expenses to be determined by the Court." To charge, as Respondents in effect have charged, that, after receiving the acceptances of the tort creditors of these provisions, the trial court approved the Plan with a reservation which would effectively destroy such provisions, is to charge the trial court with an abuse of power and excess of jurisdiction which cannot be justified. That the trial court was without power or authority to materially alter the rights of the tort creditors, as provided in the Plan submitted to and accepted by them, without having first submitted the proposed alterations for the consideration and approval of the tort creditors, is too plain to require any argument. The trial court's reservation of jurisdiction to make any and all "allowances as may be proper," in its order confirming the Plan, obviously referred to committees and counsel in respect of whose compensation no similarly definite, specific and contractual provision was made in the Plan, and for whom there was only the general provision in Section II (7) of the Plan; and obviously meant such allowances as "may be proper" under the terms and provisions of the Plan. Would it be "proper" for the Court to have made an order contravening such provision (Section II [2d]) in the Plan, when such provision had theretofore been submitted by the Court to the tort creditors as the inducement for their acceptance of the Plan?

On page 15 of their brief Respondents state that, under Petitioner's interpretation of Section II (2d) of the Plan, the trial court would have had "the say-so about nothing connected with the allowance for such (Petitioner's) services except the fixation of the amount." Such statement is incorrect. The Court on May 16, 1939, approved the

Plan with said provision therein (R. 31) and advised the tort creditors of such approval (R. 41-43, 47). Thus, the trial court, by such approval, and, subsequently, on July 7, 1939, by its confirmation of the Plan, did consider, pass upon, ratify and approve said provision for the payment by the Debtor of Petitioner's compensation, as a further and additional payment on account of the tort claims, and by the terms of the Plan, the Court retained jurisdiction and authority to **thereafter determine the amount of such compensation.**

IV.

The statements on pages 9 and 20 of Respondents' brief, to the effect that Petitioner acted for the tort creditors' attorneys and not for the tort creditors themselves, is obviously the result of an inadvertent misconception by Respondents of the statements made in Petitioner's application for compensation respecting the circumstances under which the tort creditors' Committee was formed, and the **method** by which it **solicited** tort creditors to become parties to the agreement of July 16, 1934 (the agreement by which the Committee was constituted). As appears in said application, the Committee was formed (R. 58) at the request of law firms representing a large amount of tort claims, and, in the course of the reorganization proceeding, "2,037 Tort Creditors, holding claims aggregating $1,234,684.05, joined in and became parties to said agreement, dated July 16, 1934," and other tort creditors gave the Committee their respective authorizations to accept on their behalf any plan containing in substance the provisions made for tort creditors in Section II (2d) of the Plan (R. 58). **In soliciting** tort creditors to become parties to said agreement dated July 16, 1934, the Committee, until about October, 1938, conducted such solicitations of tort creditors **through their respective attorneys**, but subsequent to about October, 1938, the Committee, having ob-

tained leave of Court so to do, sent such solicitations **directly** to tort creditors (R. 10-12, 117).

It is apparent that Respondents have, also through inadvertence, misconceived the provisions of the agreement dated July 16, 1934, respecting the financial obligations imposed therein upon the tort creditors who became parties to said agreement. While Paragraph IX of said agreement (R. 187) **in no way involves** the question of **expenses**, and deals only with the matter of the **Committee's own compensation**, the Respondents, in Point III of their brief, set forth mathematical calculations respecting "the limit of the amount * * * that the committee could have called upon the tort creditors to contribute for the services and expenses of the committee and its counsel." The fact that said Paragraph IX in no way concerns itself with the subject of **expenses**, and the fact that paragraphs VI to VIII, inclusive, of the agreement deal with the matter of both the expenses of the Committee and the tort creditors' liability therefor (R. 187), obviously constitute full answer to the portion of Point III of Respondents' brief now under discussion.*

The contention in Point III of Respondents' brief, to the effect that Petitioner "had no right of action" against the tort creditors "nor lien upon their cause of action," is fully answered by the provisions in said agreement respecting Petitioner's employment by, and the tort creditors' obligation for the expenses incurred by, the committee. Paragraph V of the agreement expressly authorized and directed Petitioner's employment as counsel by the Committee (R. 187). Paragraphs VI-VIII expressly provided that the creditors becoming parties to said agreement should pay all expenses incurred by the Committee,

*That the Respondents have misinterpreted the provisions of said Paragraph IX (R. 187), even in respect of the Committee's own compenpensation (which provisions, are, however, immaterial here), is readily apparent upon mere casual examination of said paragraph.

and that their claims should be subject to a first lien in favor of the Committtee as security for the payment of such expenses. Obviously, the fees of counsel, so employed under the express provisions of said agreement, was an "expense" incurred by the Committee and the tort creditors. Such being the record facts, this Petitioner so obviously had and has an attorney's lien for his services, that it is not necessary for Petitioner to burden the Court with a consideration of the applicable laws of Missouri on that subject.

Respectfully submitted,

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